

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FREDERICK F. FAGAL, JR.,

Plaintiff,

v.

MARYWOOD UNIVERSITY,

Defendant.

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CIVIL ACTION

NO. 3:14-cv-02404-ARC

(JUDGE CAPUTO)

ORAL ARGUMENT REQUESTED

**TABLE OF PLAINTIFF'S EXHIBITS IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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Date: December 26, 2016

EX. NO.	<u>DESCRIPTION</u>
1	"Authority of the Board of Trustees" Policy Statement (Jan. 23, 1999)
2	"Delegation to the President" Policy Statement (Jan. 23, 1999)
3	"Non-reappointment of Faculty Member" Policy Statement (July 1, 2003)
4	Am. Compl. (Jan. 15, 2015) (ECF No. 7)
5	Def.'s Ans. to Pl.'s Am. Compl. & Affirmative & Other Defenses (June 30, 2015) (ECF No. 30)
6	"Academic Freedom" Policy Statement (Feb. 19, 2010) (DEF000218-DEF000219) (excerpt from Def. Ex. C)
7	"Professional Ethics" Policy Statement (July 1, 1989) (DEF000220-DEF000221) (excerpt from Def. Ex. C)
8	"President's Page: Marywood University's Goals and Objectives" (DEF000224-DEF000225) (excerpt from Def. Ex. C)
9	"Progressive Discipline" Policy Statement (Oct. 12, 2011) (DEF000249-DEF000251) (excerpt from Def. Ex. G)
10	"Faculty Grievances and Appeals" (Apr. 29, 2011) (DEF000252-DEF000257) (excerpt from Def. Ex. G)
11	"Violent Acts and Threats" Policy Statement (Apr. 29, 2011) (FFF001460-FFF001461)
12	"Institutional Property Policy" Policy Statement (Apr. 7, 2000)
13	"Deadly Weapons and Fireworks" Policy Statement (Apr. 29, 2011)
14	"Progressive Discipline" Policy Statement (May 7, 2014)
15	Second Decl. of Frederick F. Fagal, Jr. (Dec. 16, 2016)
16	Videotape Dep. of Frederick F. Fagal, Jr. (June 7, 2016)
17	Def.'s Answers & Objections to Pl.'s First Set of Interrogs. Directed to Def. (Aug. 5, 2016)
18	Oral Dep. of Alan M. Levine (Sept. 6, 2016)
19	Objections & Answers to Def.'s First Set of Interrogs. to Pl. (Nov. 20, 2015)
20	Letter from Alan M. Levine, Ph.D. to Frederick F. Fagal, Jr. (Dec. 15, 2011) (Ex. "Fagal 10") (DEF001480)
21	Faculty Handbook (July 1, 2010) (beginning to pg. 153) (DEF3456-DEF3624)
22	Faculty Handbook (July 1, 2010) (pg. 154 to end) (DEF3625-DEF3696)

EX. NO.	<u>DESCRIPTION</u>
23	Email from Frederick Fagal (Jan. 13, 2012) (DEF000014-DEF000015)
24	Video titled "Marywood University Tears Down 'Approved' Free Speech Posters- Nov 28-30 2011 Part 1 of 2" (filed manually)
25	Video titled "Marywood University Tears Down 'Approved' Free Speech Poster Nov 28-30 2011 Part 2 of 2--New posters arrive Nov. 30, 2011" (filed manually)
26	DVD: Downfall (Constantin Film AG 2004) (filed manually)
27	Finlo Rohrer, <u>The rise, rise and rise of the Downfall Hitler parody</u> , BBC New Magazine (Apr. 13, 2010 10:59 GMT), http://news.bbc.co.uk/2/hi/uk_news/magazine/8617454.stm
28	<u>Hitler Downfall parodies: 25 worth watching</u> , The Telegraph (Oct. 6, 2009 7:00 AM BST), http://www.telegraph.co.uk/technology/news/6262709/Hitler-Downfall-parodies-25-worth-watching.html .
30	Daniel A. Gross, <u>Führer Humor: The Art of the Nazi Comedy</u> , The Atlantic (Dec. 20, 2015), http://www.theatlantic.com/entertainment/archive/2015/12/look-whos-back-nazi-comedies/420081 (last viewed Nov. 16, 2016).
31	Paul Boutin, <u>Video Mad Libs with the Right Software</u> , N.Y. Times (Feb. 24, 2010), http://nyti.ms/1GiZ2Eq .
32	Virginia Heffernan, <u>The Hitler Meme</u> , N.Y. Times (Oct. 24, 2008), http://nyti.ms/29k9saG .
33	Dylan Sanborn, <u>Goodell (Hitler) Reacts to the Patriots Week 7 Victory Against the Steelers</u> , YouTube (Oct. 25, 2016), https://youtu.be/_cmsegbYKtk . (filed manually)
34	Jamnospam, <u>Real Estate Downfall</u> , YouTube (Nov. 3, 2008), https://youtu.be/bNmcf4Y3lGM . (filed manually)
35	Save NY Schools, <u>High Stakes Standardized Testing in New York...the DOWNFALL !</u> , YouTube (Sept. 4, 2013), https://youtu.be/OvKVkitKOgk . (filed manually)
36	Dep. of Helen Bittel, Ph.D. (Sept. 29, 2016)
37	Oral Dep. of Edward Joseph O'Brien (June 28, 2016)
38	Email from Edward J O'Brien to Jean O'Brien (Jan. 13, 2012 10:15 PM) (Ex. "O'Brien-1") (DEF003079-DEF003080)
39	Email from Edward J O'Brien to Donald Myers (Jan. 14, 2012 4:10 PM) (Ex. "O'Brien-2") (DEF002978-DEF002980)

EX. NO.	<u>DESCRIPTION</u>
40	Dep. of Sister Anne Munley, IHM, Ph.D. (June 2, 2016)
41	Emails between Frederick Fagal and Rod Carveth (Jan. 2-3, 2012) (Ex. "Fagal-22")
42	Dep. of Patricia E. Dunleavy, Ph.D. (Aug. 11, 2016)
43	Typed notes by Patricia E. Dunleavy, Ph.D. titled "Re: Dr. Fred Fagal's authorship and distribution of videos depicting the executive officers as Nazis" (Jan. 23, 2012) (DEF000143-DEF000144) (Ex. "Fagal-23") (highlighting added by Plaintiff's counsel)
44	Handwritten notes by Patricia E. Dunleavy, Ph.D. (Jan. 23, 2012) (DEF000162-DEF000164) (Ex. "Dunleavy 8") (highlighting added by Plaintiff's counsel)
45	Dep. of Michael A. Foley, Ph.D. (Feb. 26, 2016)
46	Email from Frances D. Ferrese to Frederick F. Fagal, Jr. and attachments (Feb. 9, 2012) (DEF000207-DEF000226) (Ex. # "15 Munley") (same as Def. Ex. C)
47	Letter from Jonathan Z. Cohen to President Anne Munley (Feb. 2, 2012) (DEF000192-DEF000196) (Ex. # "13 Munley")
48	Letter from Jonathan Z. Cohen to William J. Anthony (Feb. 17, 2012) (FFF001686-FFF001693)
49	Email from Frederick Fagal to Sr. Gail Cabral with attachments (Feb. 22, 2012 4:37 PM) (DEF003295-DEF003455)
50	Letter from Erin A. Sadlack, Ph.D. to Dr. Frederick Fagal (Mar. 26, 2012) (DEF002088) (Ex. "Sadlack 2")
51	Oral Dep. of Erin Ann Sadlack (June 28, 2016)
52	Email from Frederick Fagal to Helen Bittel, Mathew Povse, and Edward J. O'Brien, including attachment (May 6, 2012) (DEF001433-DEF001442) (Ex. "Fagal 36")
53	"Minutes. Ad Hoc Committee Meeting #2" (May 17, 2012) (DEF000322-DEF000323) (Ex. "Bittel 7"; Ex. "Povse-4"; Ex. "O'Brien-7"; Ex. "Dunleavy 32")
54	Email from Helen Bittel to Patricia E. Dunleavy (May 18, 2012 4:03 PM) (DEF001749-DEF001751) (Ex. "Bittel 9")
55	Email from Frederick Fagal to Helen Bittel, Edward O'Brien, and Mathew Povse, including attachment (July 6, 2012) (DEF001494-DEF001496) (Ex. "Bittel 16")

EX. NO.	<u>DESCRIPTION</u>
56	Email from Helen M. Bittel to Patricia E. Dunleavy (July 10, 2012 10:04 AM) (DEF3732-DEF3734) (Ex. "Bittel 17")
57	Email from Helen M. Bittel to Sr. Anne Munley, including attachment (July 5, 2012 6:29 PM) (DEF001585-DEF001590) (Ex. "Bittel 15")
58	"Faculty Grievance Committee Meeting" (June 19, 2012) (DEF001510-DEF001512) (Ex. "Bittel 12")
59	Oral Dep. of Mathew R. Povse (June 28, 2016)
60	Email from Mathew R. Povse to Sr. Anne Munley (June 25, 2012 4:20 PM) (DEF000393) (Ex. "O'Brien 13" and "Povse-9")
61	Email from Helen M. Bittel to Mathew R. Povse and Edward J. O'Brien, including attachment (June 26, 2012 12:24 PM) (DEF001370-DEF001375) (Ex. "Bittel-13")
62	Letter from William J. Anthony to Jonathan Z. Cohen (Feb. 9, 2012) (FFF000163-FFF000165) (attachment omitted)
63	"May 17. Notes from phone conversation with Pat, 10:30a" (May 17, 2012) (DEF3702) (Ex. "Bittel 8" and "Dunleavy 33")
64	"Talking points re Fagal's videos" (DEF000149)
65	Email from Dr. Alan Levine to Patricia E. Dunleavy and Michael A. Foley (Jan. 20, 2012 5:09 PM) (DEF002759-DEF002760) (Ex. "Dunleavy 6"; Dep. Ex. "Levine-8")
66	Letter from Stephanie J. Peet to Jonathan Z. Cohen (Sept. 1, 2016)
67	Letter from Sr. Anne Munley to Frederick F. Fagal, Jr. (Apr. 3, 2012) (DEF000302) (Ex. # "20 Munley")
68	Email from Helen Bittel to Erin A. Sadlack (May 17, 2012) (DEF000317) (Ex. "Bittel-6")
69	Letter from Jonathan Z. Cohen to William J. Anthony (Feb. 28, 2012) (FFF001748)
70	Statement of Material Facts in Support of Motion for Summary Judgment by Plaintiff (Nov. 21, 2016) (ECF No. 66)
71	Letter from Sr. Anne Munley to Frederick F. Fagal, Jr. (July 13, 2012) (FFF001694)
72	Letter from William J. Anthony to Jonathan Z. Cohen (Apr. 26, 2012) (FFF001697-FFF001698)
73	Email from Sr. Gail Cabral to Frederick F. Fagal, Jr. (Apr. 30, 2012) (DEF001496) (Ex. # "22 Munley")

EX. NO.	<u>DESCRIPTION</u>
74	"Faculty Senate Minutes, McGowan Room 1059, 3:00-4:40 PM, January 11, 2013" (page numbers added)
75	Kristin K. Kucsma, M.A. & Stephen B. Levinson, Ph.D., <u>An Appraisal of Economic Loss to Frederick F. Fagal, Jr.</u> (Nov. 2, 2016)

Respectfully,

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CERTIFICATE OF SERVICE

I, Jonathan Z. Cohen, attorney for Plaintiff, certify that the foregoing document has been filed electronically and is available for viewing and downloading from the ECF system. The following parties have consented to electronic service:

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